

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. S1-4:18 CR 975 CDP
)	
DUSTIN BOONE,)	<u>FILED UNDER SEAL</u>
CHRISTOPER MYERS,)	
and STEVEN KORTE,)	
)	
Defendants.)	

**NOTICE OF INTENT TO USE INEXTRICABLY INTERTWINED EVIDENCE AND/OR
RULE 404(b) EVIDENCE**

COMES NOW, the United States of America, by and through Sayler A. Fleming, United States Attorney for the Eastern District of Missouri, and Robert F. Livergood and Carrie Costantin, Assistant United States Attorneys for said District, and files this notice in accordance with Rule 404(b) of the Federal Rules of Criminal Procedure to provide reasonable notice in advance of trial of the permitted purposes for which the Government intends to offer the evidence at trial. This case is set for trial on March 15, 2021.

The Government asserts that the evidence listed in this notice is, in fact, intrinsic to the charged offenses and therefore not subject to Rule 404(b). However, from an abundance of caution, the Government notifies the defendants of its intended use of the listed evidence.

I. Introduction

The Superseding Indictment charges the defendants, all of whom were law enforcement officers, with a civil rights charge and obstruction-related offenses against two of the officers. In particular, defendants Dustin Boone, Christopher Myers and Steven Korte are charged with

violating 18 U.S.C. §§ 2 and 242 (deprivation of civil rights under color of law); defendant Myers is charged with violating 18 U.S.C. § 1519 (destruction, alteration, or mutilation of evidence in a federal investigation); and defendant Korte is charged with violating 18 U.S.C. § 1001 (making false statements to the Federal Bureau of Investigation).

II. Factual Background

Following the acquittal on September 15, 2017, of former St. Louis Metropolitan Police Department (“SLMPD”) Officer Jason Stockley on a state murder charge stemming from an officer-involved shooting, there were multiple days of concentrated protests in and around St. Louis, Missouri. SLMPD and the City of St. Louis had notice of the impending verdict, planned their protest response, and organized its officers into response teams. Many officers, including defendants Dustin Boone, Christopher Myers, and Steven Korte, were detailed to the Civil Disobedience Team (CDT). SLMPD Detective L.H., a 22-year veteran officer of SLMPD, was assigned to work in an undercover capacity during the protests and was tasked with documenting protest activity and property destruction.

The Arrest and Assault of L.H.

During the evening of September 17, 2017, two days after the protests began, L.H. was working undercover and ended up at or around the St. Louis Public Library at the corner of 14th Street and Olive Street. At around the same time, Boone, Myers, Korte, and other CDT officers were walking north on 14th Street toward Washington Avenue. The CDT officers were walking in a double-file line. While the CDT was walking on 14th Street, there was very little protest activity at the intersection of 14th Street and Olive Street.

As the CDT approached the corner of 14th Street and Olive Street, CDT officers began running toward individuals who were running from pepper balls being dispersed by the SLMPD

SWAT. L.H. was present in the area in his capacity as an undercover officer and was not committing any crime.

L.H. was standing on the corner of 14th Street and Olive Street between a portable generator and a traffic box. Believing that L.H. was a protester, the defendants Boone, Hays, Korte, and Myers took L.H. into custody, and in so doing, assaulted him, using physical force that was both unnecessary and unreasonable. While L.H. was on the ground, and in a confined area, multiple officers were around him, struggling with his body and yelling at L.H. to put his hands out. Throughout the arrest, L.H. never resisted any of the officers around him or otherwise did anything to warrant the use of physical force against him. Nonetheless, officers used physical force against L.H. Specifically, Boone knelt on L.H.'s back and forced his head down on the cement, while telling L.H. not to look at him; Hays delivered strikes to L.H.'s body with his riot baton; Korte kicked L.H.; and Myers struck L.H. and intentionally mutilated or broke L.H.'s cellular phone and removed the battery from his camera. Boone's, Myers', Hays', and Korte's actions were without reason or provocation, and inconsistent with when it is lawful and appropriate for an officer to use such physical force.

A cell phone recording made by L.H. during his arrest and assault captured Hays' and Korte's voices yelling at L.H., as well as images of Myers's face.

The following day, after roll call at the Electrician's Hall, a member of the SLMPD CDT team requested that all officers involved with the arrest at 14th Street and Olive Street meet him outside. Defendants Boone, Hays, Myers, Colletta, and a few other officers went outside. While meeting with the member of the command staff, the CDT officers learned that the arrestee was L.H. During this meeting, Boone admitted his role in the arrest.

Before, during, and after the events, Boone, Myers, Hays, and others texted about the

events. Those text messages are described below and are the subject of this notice.

III. Rule 404(b)

Rule 404(b) states, in part:

- (1) Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, or lack of accident.

Fed. R. Evid. 404(b)(1) and (2). Such evidence is admissible if “(1) it is relevant to a material issue; (2) it is similar in kind and not overly remote in time to the crime charged; (3) it is supported by sufficient evidence; and (4) its potential prejudice does not substantially outweigh its probative value.” *United States v. Smith*, 978 F.3d 613, 616 (8th Cir. 2020) (citation and internal quotations omitted). Rule 404(b) is a rule of inclusion. *United States v. Pierson*, 544 F.3d 933, 940 (8th Cir. 2008). The Court conducts a Rule 403 balancing test to determine whether the evidence's probative value is substantially outweighed by the danger of unfair prejudice. *Id.*

“Rule 404(b) applies only to extrinsic, not intrinsic, evidence.” *United States v. Thomas*, 760 F.3d 879, 883 (8th Cir. 2014); *United States v. Guzman*, 926 F.3d 991, 999 (8th Cir. 2019).

Intrinsic evidence is evidence offered for the purpose of providing the context in which the charged crime occurred, completes the story, or provides a total picture of the charged crime. *Thomas*, 760 F.3d at 883. “A jury is entitled to know the circumstances and background of a criminal charge. It cannot be expected to make its decision in a void-without knowledge of the time, place and circumstances of the acts which form the basis of the charge.” *United States v.*

Moore, 735 F.2d 289, 292 (8th Cir. 1984), *see also United States v. Hall*, 604 F.3d 539, 543 (8th Cir. 2010) (“We have consistently held crimes or acts which are inextricably intertwined with the charged crime are not extrinsic and Rule 404(b) does not apply.’ Evidence of other crimes or acts is inextricably intertwined if it is an ‘integral part of the immediate context of the crime charged.” (citations omitted)).

In *United States v. Johnson*, 463 F.3d 803, 808 (8th Cir. 2006), the court stated:

We have held that Rule 404(b), which governs the admission into evidence of wrongful conduct other than the conduct at issue, applies “only to ‘extrinsic’ and not to ‘intrinsic’ evidence.” *United States v. Swinton*, 75 F.3d 374, 377 (8th Cir. 1996). Evidence of other wrongful conduct is considered intrinsic when it is offered for the purpose of providing the context in which the charged crime occurred. *United States v. Forcelle*, 86 F.3d 838, 842 (8th Cir.1996). Such evidence is admitted because “the other crime evidence ‘completes the story’ or provides a ‘total picture’ of the charged crime.” *Id.*

Here, except as otherwise noted, the additional evidence completes the story and provides a total picture of the charged crimes.

An example of a text message being used as intrinsic evidence is found in *United States v. Ross*, 969 F.3d 829 (8th Cir. 2020). In that case, defendants Ross and King decided to commit a robbery because King needed money to make a car payment. Ross sent a text message to King: “Sup foo lets rob these Mexicans down here.” Two days later, Ross sent another text message to King asking to meet. King responded that he was on the way. *Id.* at 835. Ross and King then carjacked, kidnapped and eventually murdered the victim. *Id.* Ross and King were identified and charged. *Id.* at 836.

King and Ross proceeded to trial. During the trial, the district court admitted the text message, “Sup foo lets rob these Mexicans down here.” The court of appeals found that even though the victim was not Mexican, the message was inextricably intertwined with the charged

offense: “The evidence suggested that the motive for the robbery was pecuniary gain, so it was reasonable to infer that the identity of the victim was not central to the conspiracies: a proposal to rob ‘Mexicans’ easily could have evolved into a plan to rob [the victim].” *Id.* at 842.

The texts described below, complete the story and provide a total picture of the charged crimes. If the Court concludes that the texts are not inextricably intertwined, the texts are nonetheless admissible under Rule 404(b) to prove “motive, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. 404(b); *see also Pierson*, 544 F.3d at 940.

IV. Compliance with *Bruton*

If required, the texts have been redacted in compliance with *Bruton v. United States*, 391 U.S. 123 (1968).

In *Bruton*, the Supreme Court “held that a defendant is deprived of his rights under the Confrontation Clause when his nontestifying codefendant’s confession naming him as a participant in the crime is introduced at their joint trial, even if the jury is instructed to consider that confession only against the codefendant.” *Richardson v. Marsh*, 481 U.S. 200, 201-02, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987). “*Bruton* does not apply at all when a codefendant’s statements do not incriminate the defendant either on their face or when considered with other evidence.” *United States v. Melina*, 101 F.3d 567, 570 (8th Cir.1996), *overruled on other grounds by Jones v. United States*, 529 U.S. 848, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000). Moreover, “Supreme Court cases have held that *Bruton* is not violated if the non-testifying defendant’s statement only inculcates a codefendant inferentially—through linkage to other evidence.” *United States v. Coleman*, 349 F.3d 1077, 1085 (8th Cir.2003) (discussing redacted statement of non-testifying defendant).
United States v. Ali, 799 F.3d 1008, 1024-25 (8th Cir. 2015).

Thus, *Bruton* does not apply if a non-testifying codefendant’s statements do not incriminate the defendant, and it is not violated if a non-testifying codefendant’s statements only inculcate a

codefendant inferentially through linkage to other evidence.

In situations where a non-testifying codefendant's statements--or texts in this instance--would directly inculcate the defendant, the remedy is to redact the statements so they contain no reference to the defendant. *United States v. Long*, 900 F.2d 1270, 1280 (8th Cir. 1990). As long as the redactions do not draw "the jury's attention to fact that a name was omitted and invites the jury to fill in the blank" the admission of the redacted statements do not violate *Bruton. Id.*

V. Texts to be used at trial

a. Boone's Texts on September 14, 2017, noon.

Boone's texts are intrinsic evidence because the texts provide the context in which the charged crime occurred by telling the complete story. The text, "walking in a line doesn't work as well as swinging the stick!," is probative of Boone's intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the texts are not intrinsic evidence, the texts are admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to use force on protesters ("swinging the stick"), and that Boone's actions were not as the result of mistake or accident.

The texts from Matt Manley, Andrew Kleffner, and Martinous Walls are not hearsay because they are not being offered for the truth of the matter asserted, but only to provide context to Boone's texts. With regards to Myers' texts, his name does not need to be redacted because Myers' texts do not incriminate Boone, nor do Boone's texts incriminate Myers.

From	To	St. Louis Time	Body
Matt Manley	Dustin Boone, Christopher Myers, Martinous Walls, Andrew Kleffner	9/14/17 14:39	Walls, Myers and Boone have to meet at 0900 tomorrow right?

Martinous Walls	Dustin Boone, Christopher Myers, Matt Manley, Andrew Kleffner	9/14/17 14:41	that's what it's looking like.
Andrew Kleffner	Dustin Boone, Christopher Myers, Martinous Walls, Matt Manley	9/14/17 14:42	I'll be on standby from Oakville to drive Sgt. Manley and Capt. Mueller around.
Dustin Boone	Chris Meyers, Martinous Walls, Matt Manly, Andrew Kleffner	9/14/17 14:44	Yep 9am to practice walking in a line with a stick..... until shit gets real and they realize walking in a line doesn't work as well as swinging the stick!

b. Myers' text on September 15, 2017, 7:07 AM

Myers' text is intrinsic evidence because the text provides the context of the CDT response during the protests. Additionally, Myers text, "let's whoop some ass," describes Myers' attitude towards the protesters. The text is probative of Myers' intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

Michael Hines' text is admissible because it was adopted by Myers. *See* Fed. R. Evid. 801(d)(2)(B); *United States v. Lomas*, 826 F.3d 1097, 1105 (8th Cir. 2016) ("For an out-of-court statement to constitute an adoptive admission, the defendant must have been present when the statement was made, have understood it, and have had an opportunity to deny it." (citation omitted)).

If the Court determines that the texts are not intrinsic evidence, the texts are admissible under Rule 404(b) for the purpose of showing Myers' motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Michael Hines	Christopher Myers	9/15/17 7:07	Hey we are both on the same arrest team. Are we meeting at 20th and Olive?
Christopher Myers	Michael Hines	9/15/17 7:26	I know right. Yes I guess so, let's whoop some ass

c. Boone's texts on September 15, 2017, 8:54 AM

Boone's texts are intrinsic evidence because the texts provide context in which the charged crime occurred and provide a complete picture of the crime charged. Boone's text, "No stick or shield..... just fuck people up when they don't act right!," is probative of Boone's intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the texts are not intrinsic evidence, the texts would be admissible under Rule 404(b) for the purpose of showing Boone's state of mind. *United States v. Forcelle*, 86 F.3d 838, 842 (8th Cir. 1996), citing *United States v. Ball*, 868 F.2d 984, 988 (8th Cir. 1989). The text "No stick or shield..... just fuck people up when they don't act right!," will be used for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

The text by "Dad," is not being offered for the truth of the matter asserted but to provide context to Boone's texts.

From	To	St. Louis Time	Body
Dad	Dustin Boone, Kayla, Kelsea, Mom, Ashely Marie	9/15/17 8:54	Not guilty! Let the games begin

Dustin Boone	Kayla, Kelsea, Mom, Dad	9/15/17 10:22	I'm on Donny Walters arrest team! me and a BIG OL black dude r the guys that are hands on! No stick or shield..... just fuck people up when they don't act right! Haha Donny said "Boone, don't be getting out of control and chasing people through this crowd, I'll tell yo daddy!" Lol
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d. Boone's texts on September 15, 2017, 9:40 AM

Boone's texts are intrinsic evidence because the texts provide context in which the charged crime occurred and provide a complete picture of the crime charged. The text, "It's he and I that just grab fuckers and toss em around" is probative of Boone's intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the texts are not intrinsic evidence, the texts would be admissible under Rule 404(b) for the purpose of showing Boone's state of mind. The text "It's he and I that just grab the fuckers and toss em around," will be used for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Ashley Marie	9/15/17 9:40	On arrest team with sergeant Walters!!! It's ALL HANDS ON!! I'm happy I'm with him!
Dustin Boone	Ashley Marie	9/15/17 13:36	That's my dude today! Haha he's basically a thug that's on our side!!! It's he and I that just grab fuckers and toss em around

e. Boone's text on September 15, 2017, 3:37 PM

Boone's text is intrinsic evidence because the text provides context in which the charged crime occurred and provides a complete picture of the crime charged. The text is probative of

Boone's intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Andrew Ditto	9/15/17 15:37	The more the merrier!!! It's gonna get IGNORANT tonight!! But it's gonna be a lot of fun beating the hell out of these shitheads once the sun goes down and nobody can tell us apart!!!!

f. Myers' texts on September 15, 2017, 8:34 PM

Myers' texts are intrinsic evidence because the texts provide context in which the charged crimes occurred and provide a complete picture of the crimes charged. Myers' text is probative of his attitude about the protests: "for some sick reason I live for this."

If the Court determines that the texts are not intrinsic evidence, the texts would be admissible under Rule 404(b) for the purpose of showing Myers' state of mind.

The text by Amy Boyer is not being offered for the truth of the matter asserted but to add context to Myers' response.

From	To	St. Louis Time	Body
Amy Boyer	Christopher Myers	9/15/17 20:34	bad you have to deal with all this craziness of downtown
Christopher Myers	Amy Boyer	9/15/17 20:34	Lol yea but for some sick reason I live for this

g. Boone's text on September 15, 2017, 8:54 PM

Boone's text is intrinsic evidence because the text provides context in which the charged crime occurred and provides a complete picture. Boone's text is probative of his attitude towards the protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to commit the charged crimes, and that his actions were not the result of accident or mistake.

From	To	St. Louis Time	Body
Dustin Boone	Michael Flatley	9/15/17 20:54	We really need these fuckers to start acting up so we can have some fun

h. Boone's texts on September 16, 2017, 12:28 AM

Boone's text is intrinsic evidence because the text provides context in which the charged crime occurred and provide a complete picture of the crime charged. Boone's text, "This shit is crazy . . . People on the streets got FUCKED UP! Lol," is probative of his attitude towards the protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Dad, Ashley Marie, Kayla, Kelsea, Mom	9/16/17 0:28	This shit is crazy..... but it's fucking AWESOME too! Except for cops getting hurt. People on the streets got FUCKED UP! Lol

i. Boone's texts on September 16, 2017, 12:08 PM

Boone's text is intrinsic evidence because the text provides the context of the CDT response during the course of the protests following the Stockley verdict. This text explains that, although he was originally assigned to Sgt. Walters' CDT squad, he was moved to Sgt. Caruso's squad. He was on Sgt. Caruso's squad when he assaulted L.H.

From	To	St. Louis Time	Body
Dustin Boone	Donnie Walters	9/16/17 12:08	Caruso said the arrest team forNPD only has 4 members and he wanted me to switch to that squad. Were u aware of this change already?

j. Myers' texts on September 16, 2017, 8:18 PM

Myers' text is intrinsic evidence because the text provides the context of the CDT response during the course of the protests following the Stockley verdict. The text also provides context in which the charged crimes occurred and provides a complete picture of the crimes charged. Myers' text is probative of his attitude about the protests by writing "I think the bosses are being a little more lenient with the use of force by us," followed by a winky face emoji.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Myers' motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Christopher Myers	Mark Myers	9/16/17 20:18	Yea were all kind of tired and with 10 officers already injured one with a broken jaw and one with a dislocated shoulder I think the bosses are being a little more lenient with the use of force by us 😊

k. Myers' text on September 16, 2017, 8:58 PM

Myers' texts are intrinsic evidence because the texts provide context in which the charged crimes occurred and provide a complete picture of the crimes charged. The texts show that Myers' is not stressed by the protests.

If the Court determines that the texts are not intrinsic evidence, the texts would be properly admissible under Rule 404(b) because the texts show Myers' state of mind.

Truesdale's texts are not being offered for the truth of the matter asserted but to provide context to Myers' texts.

From	To	St. Louis Time	Body
Truesdale	Christopher Myers	9/16/17 20:58	Hot shots Fenton
Truesdale	Christopher Myers	9/16/17 20:58	? ¹
Christopher Myers	Truesdale	9/16/17 20:58	Are u kidding me I'm fucking fighting protestors
Truesdale	Christopher Myers	9/16/17 20:59	Im guessing my attempt at humour was wrong time, wro g olace?
Christopher Myers	Truesdale	9/16/17 21:00	No if it was humor u know I do have to wonder to ensure u weren't that absent minded lol
Christopher Myers	Truesdale	9/16/17 21:00	Love you by the way
Truesdale	Christopher Myers	9/16/17 21:01	Lol. I can tell this is a very stressful time.

¹ This row was flipped so that the sentence made sense.

			Be safe man. Beers on me when its over
Christopher Myers	Truesdale	9/16/17 21:07	I'm fucking with u, I'm not stressed bro lmao

I. Boone's texts on September 16, 2017, 10:13 PM

Boone's texts are intrinsic evidence because the texts provide context in which the charged crime occurred and provide a complete picture of the crime charged. Boone's texts, "u will see the REAL POLICE come in and clear these fucker REAL QUICK. We ain't fuckin w them tonight" and "They r gonna be fucked when we pull up" are probative of his attitude towards the protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

Ashley Marie's text is not being offered for the truth of the matter asserted but to provide context to Boone's texts.

From	To	St. Louis Time	Body
Dustin Boone	Ashley Marie	9/16/17 22:13	Just deployed to U city..... u will see the REAL POLICE come in and clear these fuckers REAL QUICK. We ain't fuckin w them tonight.
Ashley Marie	Dustin Boone	9/16/17 22:20	Some black guy in wife beater and yellow bandana bout to GET IT! Asking these cops if they have kids
Dustin Boone	Ashley Marie	9/16/17 22:21	They r gonna be fucked when we pull up. I bet they get out pretty quick. Watch, first thing that is happening is SWAT shooting them w sock rounds

			and pepper balls
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m. Boone's text on September 17, 2017, 10:07 AM

Boone's text is intrinsic evidence because the text pertains to his state of mind during the protests. Boone's text, "it's still a blast beating people that deserve it" is probative of his attitude towards the protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the text is not intrinsic evidence, the text would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

The Gavin text is not being offered for the truth of the matter asserted but to provide context to Boone's text.

From	To	St. Louis Time	Body
Gavin	Dustin Boone	9/17/17 10:07	You doing ok down there with the idiots?
Dustin Boone	Gavin	9/17/17 11:47	Yeah. A lot of cops gettin hurt, but it's still a blast beating people that deserve it. And I'm not one of the people hurt, so I'm still enjoying each night.

n. Boone's texts on September 18, 2017, at 1:00 PM

Boone's texts are intrinsic evidence and admissions to the charged crime.

Kyle Santa's texts are not being offered for the truth of the matter asserted but to add context to Boone's texts.

From	To	St. Louis Time	Body
Dustin Boone	Kyle Santa	9/18/17 13:00	I'm getting my ass chewed for the L [REDACTED] h [REDACTED] stuff and I basically held his head down to the ground and told him not to look as he got cuffed up. Apparently someone on the arrest team we handed him off to broke his fucking camera and smashed his phone. Unfuckingreal.
Kyle Santa	Dustin Boone	9/18/17 13:04	Ru in trouble?
Dustin Boone	Kyle Santa	9/18/17 13:07	I would think so yeah. They r pissed as fuck, Obviously he got stitches which is terrible. Jemerson also said the higher ups r LIVID about the phone and camera. He was already on the ground and everything by the time I got there, but I was there and can't deny it.
Dustin Boone	Kyle Santa	9/18/17 13:11	They seemed to be very pissed about the arrest team breaking his shit, but the stitches aren't a good thing at all

o. Boone's texts on September 18, 2017, 3:15 PM

Boone's texts are intrinsic evidence and admissions to the charged crime.

Randy Hays' name has not been redacted under *Bruton* because Hays has pleaded guilty and it is anticipated that he will testify at trial.

From	To	St. Louis Time	Body
Dustin Boone	Randy Hays	9/18/17 15:15	Everyone seems to think that we r ok. Still don't like it hanging over me tho!
Randy Hays	Dustin Boone	9/18/17 15:21	Yeah, me either, just told Trevor the ass whooping can be explained. The camera thing can't and we weren't apart of that.
Dustin Boone	Randy Hays	9/18/17 15:23	Yes, trust me, I am WAY more alright with what u and I did than what the others did! I don't like that we put our hands on another cop, but the situation was a little fucked up too, wasn't JUST us.

Randy Hays	Dustin Boone	9/18/17 15:28	Wasn't just us, I don't like the beating the hell outta a cop, but the department put him in that spot, he could've announced himself any time. And he wa
Randy Hays	Dustin Boone	9/18/17 15:28	sn't complying. The camera thing is just ignorant, nothing we all haven't done and if it was a protestor it wouldn't be a problem at all. ²
Dustin Boone	Randy Hays	9/18/17 15:28	Correct
Randy Hays	Dustin Boone	9/18/17 16:06	Did you see the email from Deebea that just came out.
Dustin Boone	Randy Hays	9/18/17 16:08	Yeah..... woulda been nice to know about ol Mary Beth when we were walking down 14th last night.

p. Boone's texts on September 19, 2017, 11:00 AM

Boone's texts are intrinsic evidence and admissions to the charged crime.

█' name has been redacted and replaced as indicated by the brackets to comply with *Bruton*.

Santa's texts are not being offered for the truth of the matter asserted, but to provide context to Boone's texts.

From	To	St. Louis Time	Body
Kyle Santa	Dustin Boone	9/19/17 11:00	Did [that] dumb ass even reach out to L █ and apologize?
Dustin Boone	Kyle Santa	9/19/17 11:02	Nope, he is being typical [self]. I'll tell u his whole attitude, but basically he told me if he was running around down there w the protestors and his own personal camera and didnt tell us he was a cop, then he gets what happens to a protestor. kinda said it's on him or the department but OF COURSE nothing wrong w what he did or we did.

² This row was flipped so that the sentence made sense.

Dustin Boone	Kyle Santa	9/19/17 11:04	I talked to my dad, he reached out to L [REDACTED]'s lieutenant, Crews, and talked to him on my behalf. I asked to just meet with L [REDACTED] after he is healed or whenever he wants to and clear the air. I don't really know what to think right now, I haven't personally had contact with L [REDACTED], I don't want people thinking I'm out here just head hunting people though.
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q. Boone's text on September 19, 2017, 11:12 AM

Boone's text is intrinsic evidence and an admission to the charged crime.

From	To	St. Louis Time	Body
Dustin Boone	Joe Kuster	9/19/17 11:12	Jesus I feel fucking AWFUL! I was dumbfounded when the commanders told me that he was a cop. It's so damn embarrassing to be anywhere involved in this.

r. Boone's texts on September 20, 2017, 8:53 PM

Boone's texts are intrinsic evidence because the texts provide context in which the charged crime occurred and provide a complete picture. Boone's texts, "we start beating the shit out of everyone on the street after we give two warnings" and "U may see some people getting their ass best, but u will b able to get in without fear! Lol" are probative of his attitude towards the protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the texts are not intrinsic evidence, the texts would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Scott Hubbard	9/20/17 20:53	I would come in and make sure u park on the SOUTH SIDE of the stadium. Which is the side towards Paddy Os, we r gonna try to keep them north and west. That will leave broadway open and the routes to the highways open. we have kept them out of a lot of places. The problem is when they start acting like fools, we start beating the shit out of everyone on the street after we give two warnings..... so I don't want you all to get stuck in the middle of that.
Dustin Boone	Scott Hubbard	9/20/17 21:30	Yeah I talked to a few of the commanders here and they all 3 said we r gonna shut shit down before it starts if they act up. U may see some people getting their ass best, but u will b able to get in without fear! Lol

s. Boone's texts on September 20, 2017, 10:36 PM

Boone's texts are intrinsic evidence and admissions to the charged crime. The texts by "Dad" are not being offered for the truth of the matter asserted, but to provide context to Boone's texts.

From	To	St. Louis Time	Body
Dad	Dustin Boone	9/20/17 22:39	Crews texted me and said L [REDACTED] is still in a lot of pain and the dr will look at the scan tomorrow. I asked if he thought I should call L [REDACTED] and he said let it play out. He said you'll be able to see L [REDACTED] in a day or two. Did leyshock call you outside or something
Dad	Dustin Boone	9/20/17 22:40	You didn't call him any names or anything did you

Dustin Boone	Dad	9/20/17 22:42	No I didn't say ANYTHING out of line or off color. Leyshock just saw me and asked how it all even came about. We were up by the front where nobody was around.
Dad	Dustin Boone	9/20/17 22:42	Well that's good
Dad	Dustin Boone	9/20/17 22:48	You must have put a pretty good whooping on him
Dustin Boone	Dad	9/20/17 22:50	Yeah, unfortunately. Not one I'm very proud of!!

t. Boone's texts on September 21, 2017, 5:39 PM

Boone's texts are intrinsic evidence because the texts provide context in which the charged crime occurred and provide a complete picture. Boone's text, "Here we go. Fuckin animals" is probative of his attitude towards protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

If the Court determines that the texts are not intrinsic evidence, the texts would be admissible under Rule 404(b) for the purpose of showing Boone's motive and intent to assault protesters, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Scott Hubbard	9/21/17 17:39	We don't think it will be too bad. We have some people inside the protestors that feed us info and they r basically saying they r gonna March from Keiner Plaza to the stadium. We already told the leaders if they block the streets they will get 1 warning then everyone will get locked up
Dustin Boone	Scott Hubbard	9/21/17 19:29	Here we go. Fuckin animals

u. Boone's texts on September 21, 2017, 9:04 PM

Boone's texts are intrinsic evidence and admissions to the charged crime.

Hays' name has not been redacted under *Bruton* because Hays has pleaded guilty and it is anticipated that he will testify at trial.

From	To	St. Louis Time	Body
Randy Hays	Dustin Boone	9/21/17 21:04	Any word about the meeting with L [REDACTED]
Dustin Boone	Randy Hays	9/21/17 21:21	No, Crews told my dad he will know something by tomorrow. If he doesn't, my dad is calling him. I don't want my dad to call because I think it looks cheesy as fuck but I wanna set something up sooner than later, especially w the idiots finding out. U heard anything else at all?
Randy Hays	Dustin Boone	9/21/17 21:23	Nothing at all. Just sitting here bored thinking about it. I'd just like to apologize to the man before someone gets in his ear and true to turn this int
Randy Hays	Dustin Boone	9/21/17 21:23	o something more than it was
Dustin Boone	Randy Hays	9/21/17 21:24	EXACTLY! That's my biggest fear now that it's getting around. Someone puts money or race in his ear and he listens for some reason and it's over before we get to say a word.
Randy Hays	Dustin Boone	9/21/17 21:26	Yep, and I sincerely wanna apologize to the man, on top of it looking good to do that before anything happens if it happens at all.
Dustin Boone	Randy Hays	9/21/17 21:28	Yeah my apology is what the drink bing force is, but I know how people will get over this too and at least want him to hear our side
Dustin Boone	Randy Hays	9/21/17 22:29	Driving force**

v. Boone's texts on September 23, 2017, 5:16 PM

Boone's texts are intrinsic evidence and an admission to the charged crime.

“Dad’s” text is admissible because it was adopted by Boone. *See* Fed. R. Evid. 801(d)(2)(B); *Lomas*, 826 F.3d at 1105.

From	To	St. Louis Time	Body
Dad	Dustin Boone	9/23/17 17:16	<p>This is what I sent to L [REDACTED]</p> <p>Hey L [REDACTED] I wanted to wait a bit and give you a chance to get to feeling better but I'm just checking up on you to see how you are feeling. Give me a call when you feel up to it.</p> <p>PS, my son Dustin has been wanting to reach out to you but was told to wait awhile. He and I both feel terrible about what happened. Call me if you need anything (and I mean that) but also when you feel up to it</p>
Dustin Boone	Dad	9/23/17 17:17	Thank you

w. Boone’s text on September 23, 2017, 6:06 PM

Boone’s text is intrinsic evidence because the text provides context in which the charged crime occurred and provides a complete picture. Boone’s text is probative of his attitude towards protesters and his intent to assault protesters (L.H. was an undercover officer posing as a protester) and willfully deprive them of the right to be free from unreasonable seizure and free from unreasonable force.

From	To	St. Louis Time	Body
Dustin Boone	Dad, Kayla, Kelsea, Mom, Ashley Marie,	9/23/17 18:06	Did everyone see the protestors getting FUCKED UP in the galleria???? That was awesome!

x. Boone's text on September 25, 2017. 9:04 AM

Boone's text is intrinsic evidence and an admission to the charged crime because Boone apologizes to L.H.

From	To	St. Louis Time	Body
Dustin Boone	L [REDACTED] H [REDACTED]	9/25/17 9:04	L [REDACTED], this is Dustin Boone. I am sure you know by now that I was involved in the incident last Sunday downtown. I have attempted to reach out to you through a few different commanders and I have been told to hold off. I have not heard much from anyone in regard to you receiving the message I wanted to be conveyed to you so I decided to text you myself today. I feel like an apology will never be enough but I would really like to speak to you in person so I can apologize face to face as a man and not through a text message. I completely understand if you are not willing to meet with me and if that is the case, I would ask if you are willing to accept a phone call from me once you are healthy and feel the timing is right. Again, I would much rather tell you I am sorry while I'm standing in front of you than over a telephone, but understand your side of all of this as well. Please let me know and if you are willing, I will be available at any point in time. I hope you are healing both physically and mentally. I can't imagine what you have gone through the past week. I hope you allow me the opportunity to tell you I am sorry in person, it won't make it right but I feel it is the very least I can do. I hope to talk to you soon L [REDACTED]. Get well.

y. Myers' texts on September 25, 2017, at 4:46 PM

Myers' texts are intrinsic evidence and admissions to the charged crimes because Myers is

stating he wants to apologize to L.H.

True's texts are not being offered for the truth of the matter asserted but to add context to Myers' texts.

From	To	St. Louis Time	Body
Chris True	Christopher Myers	9/25/17 16:46	U all good. Im hearing some bad rumors
Christopher Myers	Chris True	9/25/17 17:03	I hope so, I guess for now. Not sure
Chris True	Christopher Myers	9/25/17 17:08	Is marty caught up also.
Christopher Myers	Chris True	9/25/17 17:09	No he wasn't with me
Chris True	Christopher Myers	9/25/17 17:10	I know Lh do you want me to talk to him?
Christopher Myers	Chris True	9/25/17 17:13	Yea if u can I have been wanting to apologize to him personally cuss I feel bad. We obviously didn't know he was a policeman. Can I call you?

z. Boone's texts on September 25, 2017, 5:14 PM

Boone's texts are intrinsic evidence because the texts provide a complete picture of the charged crime. The texts are probative of whether L.H.'s phone and camera were intentionally mutilated, altered or broken.

"Dad's" text is not being offered for the truth of the matter asserted, but to provide context to Boone's texts.

█' name has been redacted and replaced as indicated by the brackets to comply with *Bruton*. In addition, Sgt. Manley and Officer Andrew Kleffner will testify that █ told each of them that █ was not sure if he kicked L.H., that he might have kicked L.H., that he did not think he kicked L.H. and that he threw L.H.'s phone because there was a red substance on it. As noted above, *Bruton* is not violated if a non-testifying codefendant's statements only inculcate a

codefendant inferentially through linkage to other evidence.

From	To	St. Louis Time	Body
Dustin Boone	Dad	9/25/17 17:14	In car w fucking [officer] tonight, what's up? I don't even wanna speak around this asshole
Dad	Dustin Boone	9/25/17 17:15	Don't get involved in anything with that guy. Did you hear anything more today
Dustin Boone	Dad	9/25/17 17:17	I have not, except people saying they r hearing [the officer] busted all of his shit and kicked him in the head. Sgt. Manley asked him what happened in front of Walls and myself and he changed his story about 5 times, denied everything, then said he smashed the phone, then says he threw the camera battery..... said he doesn't remember if he kicked him in the head or not! He's a joke.

aa. Dustin Boone's texts on September 25, 2017, 5:41 PM

Boone's texts are intrinsic evidence and show Boone's consciousness of guilt because of his concern about what will happen following his assault on L.H.

Hays' texts are not being offered for the truth of the matter asserted but to provide context to Boone's texts. Randy Hays' name has not been redacted under *Bruton* because Hays has pleaded guilty and it is anticipated that he will testify at trial.

█' name has been replaced as indicated in the brackets to comply with *Bruton*.

From	To	St. Louis Time	Body
Dustin Boone	Randy Hays	9/25/17 17:41	Heard anything today?
Randy Hays	Dustin Boone	9/25/17 17:41	Nothing at all, how about you.

Dustin Boone	Randy Hays	9/25/17 17:46	Just [the officer] changing his story again..... and apparently Manley heard a really fucked up account of events and said he heard everyone was gonna be forced to resign. I'm pretty concerned right now just because it's all unknown. Manley seemed to be very unhappy w [the officer] and thought he was lying his ass off.
Randy Hays	Dustin Boone	9/25/17 17:49	That's not going to happen, they don't have just cause to do that and can't. Who is manly?
Dustin Boone	Randy Hays	9/25/17 17:49	My sergeant. Came from spec ops and now runs our little squad
Randy Hays	Dustin Boone	9/25/17 17:51	We know what happened, we know [the officer] is lying, it's all rumors and shit now.

bb. Boone's texts on September 25, 2017, 8:29 PM

Boone's texts are intrinsic evidence as to the charged crime and indirectly an admission when he texts, "why would they not call me and give me a heads up to??? My actions were not the same as Hays and [the other officers] but still."

Hays' name has not been redacted under *Bruton* because Hays has pleaded guilty and it is anticipated that he will testify at trial.

█' name has been replaced as indicated in the brackets.

From	To	St. Louis Time	Body
Dustin Boone	Dad	9/25/17 20:29	Hays, a guy involved in the L █ incident, got a call tonight from the association saying to call Brian Millikan tomorrow so they can get out in front of this..... why would they not call me and give me a heads up too??? My actions were not the same as Hays and [another officer] but still. Nobody knows if they called [another officer] cuz Manley told him to leave tonight,

			I'll tell u more about that later!
Dustin Boone	Dad	9/25/17 20:40	I also don't wanna day "hey I was involved too!" If they don't seem to think anything of my end of it all? Or does that not matter?

cc. Dustin Boone's texts on September 26, 2017, at 9:25 PM

Boone's texts are intrinsic evidence because the texts provide the context in which the charged crime occurred by telling the complete story of what occurred after the assault on L.H. Additionally, Boone's texts show consciousness of guilt because of Boone's concern about what will happen following his assault on L.H. and Boone's need to talk with Myers privately.

Myers' texts are not hearsay because they are not being offered for the truth of the matter asserted, but only to provide context to Dustin Boone's texts.

Bruton does not require redactions because Myers' texts do not incriminate Boone, nor do Boone's texts incriminate Myers.

From	To	St. Louis Time	Body
Dustin Boone	Christopher Myers	9/26/17 21:25	Heard some POSITIVE stuff about the whole L. [REDACTED] deal..... so that's good. I'll tell ya in person.
Christopher Myers	Dustin Boone	9/26/17 21:33	Awesome I'll catch up with u before we leave
Dustin Boone	Christopher Myers	9/26/17 21:33	In the basement at station.
Christopher Myers	Dustin Boone	9/29/17 18:16	U good?

Dustin Boone	Christopher Myers	9/29/17 18:19	Yeah, I was doin some recon about the situation! I'll tell u about it when we aren't around 8547 cops! Nothing terrible. Now I'm just playing a new game I got on my phone cuz it passes the hours
Dustin Boone	Christopher Myers	9/29/17 18:19	Talking to Griggs and this nerd herd about video games!
Christopher Myers	Dustin Boone	9/29/17 18:20	Cool, nah I just saw u talking to Caruso and Allen wanted to make sure ur cool bro, we will talk later.

dd. Boone's and Myers' texts on October 31, 2017, at 2:32 PM

Boone's texts are intrinsic evidence because the texts provide the context in which the charged crime occurred by telling the complete story of what occurred after the assault on L.H. Additionally, Boone's texts show consciousness of guilt because of Boone's concern about a possible internal affairs investigation.

Myers' texts are not hearsay because they are not being offered for the truth of the matter asserted, but only to provide context to Dustin Boone's texts.

Bruton does not require redactions because Myers' texts do not incriminate Boone, nor do Boone's texts incriminate Myers.

From	To	St. Louis Time	Body
Dustin Boone	Christopher Myers	10/31/17 14:32	Sarge and I r out looking for shit in fountain park. He just got a call at the station from internal affairs tho so we r pulling over so he can make a call back. Kinda makes me nervous!
[Another Officer]	Dustin Boone	10/31/17 14:35	Right! let me know what you can make out from it...
Dustin Boone	Christopher Myers	10/31/17 14:35	I will. Where r y'all at?

[Another Officer]	Dustin Boone	10/31/17 14:35	On kingshighway heading ur way
Dustin Boone	Christopher Myers	10/31/17 14:36	We r on Euclid between page and dr king
Dustin Boone	Christopher Myers	10/31/17 14:39	On the road again. Nothing concerning us.

ee. Boone's texts on November 17, 2017, 7:36 PM and 7:38 PM

Boone's texts are admissible under Rule 404(b). The texts are probative of Boone's state of mind with respect to apprehending suspects and his actions described in the text are similar to those that occurred with L.H. The texts would be admissible for the purpose of showing Boone's motive and intent to assault suspects, and that his actions were not the result of mistake or accident.

From	To	St. Louis Time	Body
Dustin Boone	Tim Strain	11/7/17 19:36	Yep. Mother fuckers. Dude got caught in a dead end gangway tho..... he was crying and bloody for making me fucking run that far. Thanks buddy. U good?

From	To	St. Louis Time	Body
Dustin Boone	Ashley Marie	11/7/17 19:38	We just chased a car for a shooting, got all 4 shit heads and the gun, but I had to run forever again and feel like shit right now. Can't breathe. But dude got GOT in a dead end gangway by me and he is NOT in good shape now

ff. Myers' Text on November 19, 2017, 3:51 PM

Myers' text is admissible under Rule 404(b). The text is probative of Myers' state of mind with respect to apprehending suspects and his actions described in the text are similar to those that occurred with L.H. The text would be admissible for the purpose of showing Myers' motive and intent to assault suspects, and that his actions were not the result of mistake or accident.

█'s name was replaced with "another officer."

From	To	St. Louis Time	Body
Christopher Myers	Matt Manley, Walls, [Another Officer,] Andrew Kleffner	11/19/17 15:51	We had actually disengaged our following when we witnessed the crash and at that point we activated our equipment to check on the officer and try to fuck up the bad guy

gg. Myers' texts on May 2, 2018, at 9:08 AM, and May 22, 2018, at 5:20 PM

Myers' texts are admissible under Rule 404(b). The texts are probative of Myers' state of mind with respect to apprehending suspects and his actions described in the text are similar to those that occurred with L.H. The texts would be admissible for the purpose of showing Myers' motive and intent to assault suspects, and that his actions were not the result of mistake or accident.

█'s texts are not being offered for the truth of the matter asserted but to supply context to Myers' texts. █'s name has been replaced with "another officer."

From	To	St. Louis Time	Body
█	Christopher Myers	5/2/18 9:08	We brought in 3 bodies last night but we threw Kori 2 felonies for this prob and then we got a tampering
Christopher Myers	█	5/2/18 9:09	Good stuff bud
█	Christopher Myers	5/2/18 9:11	Appreciate it boss. I about broke my fucking hand on a dude 2 nights ago
Christopher Myers	█	5/2/18 9:20	Haha employee injury report
█	Christopher Myers	5/2/18 9:22	He turned his head after I popped him a couple times and I punched him in the back of the head and my hand swelled up right away lol
Christopher Myers	█	5/2/18 9:23	Haha, the joys of nightwatch
█	Christopher Myers	5/2/18 9:25	I think that's the last time I just bare knuckle punch someone because my hand hurts.

Christopher Myers	[REDACTED]	5/2/18 9:25	Yea but it's fun
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From	To	St. Louis Time	Body
[REDACTED]	Christopher Myers	5/22/18 17:20	You should be proud of your boys. Only reason the 4th caught those car jackets cause [another officer] ran one down and I ran down the other. 4th lost the 3rd one
Christopher Myers	[REDACTED]	5/22/18 17:22	Really, so ur good for more than just quoting RSMO's on fb huh?
Christopher Myers	[REDACTED]	5/22/18 17:22	Lol
[REDACTED]	Christopher Myers	5/22/18 17:22	Hahahaha I said be proud bitch
Christopher Myers	[REDACTED]	5/22/18 17:23	I am proud of you guys that's why I give you shit. U know I respect the work u guys do
Christopher Myers	[REDACTED]	5/22/18 17:24	Just gotta drop the hammer on you when u talk shit
Christopher Myers	[REDACTED]	5/22/18 17:24	Bitch
[REDACTED]	Christopher Myers	5/22/18 17:24	I'm a young aspiring chris Myers
Christopher Myers	[REDACTED]	5/22/18 17:24	Lol
Christopher Myers	[REDACTED]	5/22/18 17:24	Oh god... said no one ever
[REDACTED]	Christopher Myers	5/22/18 17:25	Hit the 14 year old so hard with my pistol across his face it flew out of my hand lol
Christopher Myers	[REDACTED]	5/22/18 17:25	Stick with me and I'll take you to the top
Christopher Myers	[REDACTED]	5/22/18 17:25	Damn bro, he was 14!
[REDACTED]	Christopher Myers	5/22/18 17:25	Yeah lol and [another officer] caught the driver who's 19
Christopher Myers	[REDACTED]	5/22/18 17:26	He just needed a stern talking too, a friendly example of a policemen who could be a positive figure to Jim and bridge the gap between young

			minority males and police...
Christopher Myers		5/22/18 5:26	*him* not Jim
	Christopher Myers	5/22/18 17:29	Lmao yeah. Even [the] liberal [officer] beat the shit out of his guy with his flashlight lol
Christopher Myers		5/22/18 17:31	Haha

VI. Conclusion

For the foregoing reasons, the Government respectfully requests that the Court admit the evidence outlined above because the evidence is intrinsic to the charged offenses, or, in the alternative, pursuant to Rule 404(b).

Respectfully submitted,

SAYLER A. FLEMING
United States Attorney

/s/ Robert F. Livergood
ROBERT F. LIVERGOOD, #35432MO
CARRIE COSTANTIN #35925
Assistant United States Attorneys
111 S. 10th Street, Rm. 20.333
St. Louis, Missouri 63102
(314) 539-2200

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2021, the foregoing was filed electronically with the Clerk of the Court and emailed to the following:

Patrick S. Kilgore
Attorney for Dustin Boone
1015 Locust
Suite 914
St. Louis, MO 63101
Email: patrick@patrickkilgorelaw.com;

N. Scott Rosenblum
Attorney for Christopher Myers
120 S. Central Ave.
Suite 130
Clayton, MO 63105
Email: srosenblum@rsflawfirm.com; and

John P. Rogers
Attorney for Steven Korte
120 S. Central Ave.
Suite 160
Clayton, MO 63105
Email: jrogers@rsblawfirm.com.

/s/Robert F. Livergood
ROBERT F. LIVERGOOD, #35432MO
Assistant United States Attorney